IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3267 OF 2004
IN
FIRST APPEAL NO.1199 OF 2003

M/s.Niwas Properties (India) Pvt. Ltd. ..Applicant

V/s.

Rajesh Shantilal Chordiya & anr. ..Respondents

Mr.R.D.Soni i/b.M/s.Ram & Co. for applicant
Mr.S.M.Gorwadkar, advocate, for the respondents

CORAM : A.S.OKA, J.

DATE : 11TH OCTOBER, 2007

P.C.

1. Heard learned counsel appearing for the parties. Along with appeal filed by the applicant, a Civil Application No.3052 of 2003 was filed for stay of the execution of the impugned Judgment and Decree. The said application was finally disposed of by order dated 6th July, 2004. By the said order, this Court granted interim stay of the execution of the decree subject to applicant depositing the entire amount due as per the impugned Judgment and

Decree in the trial Court within a period of 12 weeks from the date. In the present application, the prayer is for modification of the order dated 6th July, 2004. The first prayer is for reduction in the amount of deposit as ordered by Clause (i) of paragraph 3 of the said order. The second prayer made in the alternative is that the applicant may be permitted to provide security to the satisfaction of the trial Court of any immovable property to make up the balance amount awarded to respondent No.1 after adjusting amount of Rs.2,00,000/- which was already deposited by the applicant. There is an ad-interim order passed by this Court in the present Civil Application directing the parties to maintain status-quo.

2. The first respondent in the appeal has filed Civil Application No.5383 of 2006 praying for vacating the ad-interim order passed in this application.

3. The applicants has deposited further amount of Rs.2,00,000/- in this Court on 29th September, 2007. The said amount is deposited by tendering Demand Draft. An affidavit has been filed in this Civil Application by one Shri Nemichand Lalitprasad Potdar, Director of the applicant. In paragraph 2 and 3 of the said affidavit it is stated thus :-

> "I further say that the Respondents have filed a Darkhast in the trial court For Rs.11,47,838/- in the aforesaid suit, in which the impugned decree is passed."

> "I say that in view of the conditional stay of the operation of the Decree granted by this Hon'ble Court, I undertake to deposit the balance decretal amount of Rs.7,47,838/- in this Hon'ble court in four quarterly instalements, the first three being of two lacs each payable on or before 5th of January, 2008, 5th of April, 2008, 5th of

July, 2008 and the balance amount on or before 5th of October, 2008".

4. After having heard learned counsel appearing for the parties I find that no case is made out for modification of order dated 6th July, 2004 as prayed in this application. The said order was passed after hearing both the parties.

5. The applicant has offered to deposit the balance decretal amount. It is stated in the aforesaid affidavit that in the execution application filed by first respondent a sum of Rs.11,47,838/- has been claimed. The decretal amount can be approximately taken as Rs.12,00,000/- Out of the said amount, a sum of Rs.4,00,000/- has been deposited by the applicant in this Court. For the balance amount, the applicant is seeking instalements. As the applicant has offered to pay the balance amount, a case is made out for grant of instalements for the purposes of compliance with

the condition incorporated in the order dated 6th July, 2004.

6. Hence, I pass following order.

(i) Order dated 6th July, 2004 passed in Civil Application No.3052 of 2003 is modified to the following extent.

(a) There will be interim stay in terms of prayer clause (a) of Civil Application No.3052 of 2003 subject to the applicant depositing in this Court a sum of Rs.8,00,000/- by four quarterly instalements of Rs.2,00,000/- each payable on 5th January, 2008, 5th April, 2008, 5th July, 2008 and 5th October, 2008 respectively. It is made clear that if any single default is made by the applicant, the stay will stand vacated without further reference to

the Court.

(ii) The amount already deposited by the applicant shall be invested in Fixed Deposit in any Nationalised Bank initially for a period of six months. This direction is without prejudice to the right of the first respondent to apply for withdrawal of the amounts deposited by the applicant. If such application is made, it will be decided in accordance with law after hearing objections of the applicant.

(iii) Civil Application is accordingly disposed of.

(iv) Parties to act upon an authenticated copy of this order.

(**A.S.OKA, J.**)